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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,019	11/30/2001	Andrew Joseph Keogh	063511/9043	4717

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/889,019

Applicant(s)

KEOGH, ANDREW JOSEPH

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 23-38 and 40-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-38 and 40-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Claims 49-52 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed Nov. 12, 2004, applicant amends the claims to recite a temperature range of "greater than 100 to 150 degree C ". This temperature range is not supported by the original disclosure and claims. The specification discloses 70-150 degree C. The examples do not set forth the range as now claimed. For example, example 1 sets forth that the temperature in the extruder ranges from 30-40, 60-65 and 140-150 degree C; the temperatures include those falling below 100 degree C. In claim 52, applicant claims " extruding occurring after the partially expanding"; this limitation is not supported by the original disclosure. The bottom of page 3 to the top of page 4 discloses " initial expansion may be at least partially effected by application of heat and or by reduction of pressure ( e.g. application of partial vacuum or extrusion through a die). There is no disclosure of extruding after the partially expanding. Examples 1-2 disclose extruding the raw product; there is no disclosure of extruding the product that is already partially expanded.

Claim 52 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 52: Line 9, what does applicant mean by "further expose"; does applicant mean "further expanding".

Claims 23-29,31-38,40-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisson et al.

Bisson et al disclose a process of making puffed product. The process comprises the steps of forming mixture of materials and passing the mixture through an extruder having temperature in the range of 30-70 degree C in the barrel, 40-100 degreeC in the nozzle and under pressure. The paste-like material issuing from the extruder is passed into an enclosure where a subatmospheric pressure prevails. The enclosure has a pressure of from 2-71kPa( 20000-71000 Pa). The paste-like material expands in the enclosure by evaporation of the water. The strand issuing from the extruder nozzle may be cut up into rodlets, pellets or chip. Alternative, the extruded strand may be discharged into a space where atmospheric pressure prevails. The temperature in the extruder imparts to the materials the plasticity required for passing smoothly through the bores in the nozzle. The product obtained can be seasoned, sweetened, flavoured or coloured. The puffed product may be impregnated with a fat, syrup, liquor or an alcohol. The mixture used to form the food product contains water. (see col. 2-3)

Bisson et al do not disclose using a belt conveyor, the foodstuff is a confectionery, forming the composition into balls, the second temperature being lower than the first temperature, extruding after the partially expanding and temperature greater than 100-150 degreeC.

It would have been obvious to use a belt conveyor to transport the composition to the enclosure where expansion takes place. The use of the conveyor belt enhances the speed of the process. It would also have been obvious to make a confectionery product because Bisson et al disclose various compositions can be made and materials such as syrup, sweetening agent can be added. The addition of sugar will make the product to be a confectionery product. It would also have been obvious to make the second temperature to be lower than the first temperature because the composition has already been plasticized in the extruder; thus, the composition does not need to be heated. It is obvious the product is cooled after it exists the extruder. It would have been obvious to make the temperature around ambient to quicken the cooling of the product. As to the temperature of greater than 100-150 degree C, greater than 100 can include 100.01 which would not differentiate from the 100 degree disclosed by Bisson because temperature can vary slightly and not be detected or produce a different result. As to extruding after partially expanding, it is not cited in the claim what degree of expanding is encompassed by the term "partially expanding". Thus, any expansion, no matter how slightly, is considered partially expanding. In the Bisson process, the dry flakes are moistened with water before they are extruded; this moistening obviously causes the flakes to absorb water and thus, the flakes increase in size from the dry flakes. This is considered to be partially expanding.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bisson et al in view of Forkner.

The teaching of Bisson is described above. Bisson does not disclose adding a chemical expanding agent.

Forkner discloses expanded confections. He teaches to add chemical expanding agent to aid in the expansion. (See col. 6 lines 45-50)


It would have been obvious to add a chemical expanding agent as taught by Forkner in the composition of Bisson to aid in the expansion of the food product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

11/23/04

  
LIEN TRAN  
PRIMARY EXAMINER  
